obligations under federal law.

Present FCC preemption addresses health concerns by controlling for exposure-not emissions. A licensee might simply be required to post signs or erect fences around a microwave transmission facility to keep the public at a distance. The new NCRP standards, like the ANSI/IEEE standards before, calculate only for thermal exposure. Legitimate questions about long-term, low-level exposure remain unaddressed. Under Act 250 it is the applicant's burden of proof to demonstrate RFR compliance. Documentation includes FCC license, equipment specifications, and testimony by applicant's site technician. Opponents are allowed to come forward with evidence to demonstrate non-compliance. The FCC should not adopt any rules that would undermine Act 250's requirement that an applicant demonstrate that its project complies with guidelines. The FCC provides localities with no mechanism to monitor facilities after their construction and even after future modifications. The FCC must not allow what would amount to a self-certification process.

Any rule which is adopted by the FCC must not hinder any citizen participation. The FCC should not create barriers to citizen participation, or the participation of the authority whose ruling is being challenged.

A tower on the horizon is clearly not in harmony with the rural nature of Vermont, and is, therefore, by definition, "an adverse impact." But is its adverse impact so detrimental to the aesthetics of the area as

to be judged "an undue adverse impact"? This answer can only be found at the local and state level. Washington cannot presume to make this type of judgment.

Dated at Marshfield, Vermont this 23rd day of October, 1997.

Thistle Hill Neighborhood Alliance

By: Dale A. Newton

Dale A. Newton

Janet L. Newton

Janet L. Newton

TOWN OF CABOT
P.O. Box 36
CABOT, VERMONT
05647

Christopher Kaldor, Clerk-Treasurer
Velma J. White, Asst. Clerk-Treasurer

Office (802) 563-2279

Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington DC 20554

October 23, 1997

IN RE: MM DOCKET NO. 97-182
WT DOCKET NO. 97-192
ET DOCKET NO. 93-62
RM-8577

FORMAL FILING OF COMMENTS BY THE CABOT, VT SELECTBOARD

The Selectboard -- the municipal governing body -- of Cabot, Vermont, wishes to file the following comments on the above dockets.

The Cabot Selectboard is greatly alarmed that the FCC is contemplating further pre-emption of state and local laws pertaining to personal wireless service facilities and other broadcast facilities and sitings. We request that the FCC decline to extend its jurisdiction and further displace local authority and autonomy.

The Telecommunications Act of 1996 explicitly preserves state and local zoning authority. Section 704(a) states:

> *Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.*

Section 704(a) sets out the limitations referred to above, these being, in paraphrase, that the State or local government or instrumentality thereof:

a) shall not unreasonably discriminate among providers of functionally equivalent services;
b) shall not prohibit or have the effect of prohibiting the provision of personal wireless service services;
c) shall act on requests to locate, construct or modify personal wireless service facilities within a "reasonable period of time;"

d) shall decide upon such requests in writing and with substantial written evidentiary support;
e) may not regulate such facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with FCC regulations.

Further limitations upon State and local governments -- such as restricting the evidence that state and local regulatory boards may require of applicants for telecommunications facilities permits -- are not authorized by the Act and are indeed explicitly prohibited by the Act.

Section 704(a) leaves no doubt that Congress did not intend to occupy the entire field of regulation that might pertain to wireless telecommunications, but rather defined very closely the limited area in which the FCC, carrying federal law into practice, might pre-empt state and local authority by regulation. The further pre-emptions requested in the above-mentioned dockets, if adopted, would suggest an attack on the doctrine of concurrent powers by asserting, in effect, that state or local sovereignty may be nullified by federal regulatory agencies. Such erosions of local sovereignty as the requests in the above dockets propose would be deeply resented by Cabot landowners, who may consent, by the ballot, to surrender many prerogatives of ownership for the general welfare but will resist being compelled to further surrender such prerogatives for the advantage of private corporations. It is very difficult for us to imagine why the FCC would wish to raise this incendiary issue.

Pre-emption of State and local zoning and land use restrictions in the siting, placement and construction of personal wireless communication service facilities, broadcast station transmission facilities or mobile radio service transmitting facilities would also involve the FCC in rewriting state and local land use and environmental protection laws, an area which lies beyond its jurisdiction. In particular, such pre-emption would undermine Vermont's major environmental and land use law, Act 250. The Town of Cabot, which in its municipal construction projects is bound by the permitting requirements of Act 250, relies on Act 250 as an essential regulatory tool to protect the quality, wholesomeness and beauty of its hills, woods, and streams. Agriculture remains the basis of our local economy, and we have a vital interest in the effectiveness of Act 250, which supports our municipal land use ordinances.

Like other rural municipalities around Vermont, Cabot (population 1,043) creates its local zoning ordinances by slow democratic process. Proposed ordinances originate in a Planning Commission, but citizens may compel planners, by petition, to consider proposals generated at the grass roots. The Planning Commission passes its recommendation to the Selectboard, which decides whether to place proposals before the voters at an annual or special Town Meeting. Municipalities are chartered creations of the Vermont Legislature, hence their authority to enact ordinances is closely described in statute, but, within those limits, the people themselves have the last word. Thus, our land use regulations truly and directly express the popular will. Decisions about how best to preserve our local rural areas and regulate what is local commerce are best made by this local process, not by Washington. To nullify our ordinances without cause or explanation, for no discernible public benefit, to accomplish no great national goal, to fulfill no Constitutional

responsibility, and at the sole behest of private corporations will only seem profoundly disrespectful of our democratic traditions. Some might ask where such nullification might end.

The Cabot Planning Commission is presently considering a zoning ordinance pertaining specifically to personal wireless communications facilities. We are attempting in good faith to balance the needs of a rapidly expanding industry with the desire of our township to retain its agricultural character and scenic beauty. In the process, we are educating ourselves, adapting to the exigencies of a new era, and, at the same time, reaffirming what we most value in our community, in our corner of the world. Democracy lives and breathes in such a process. Why would anyone wish to interrupt it?

The wireless communications industry has the same rights, advantages and privileges as any other commercial entity in Vermont. There is no reason to give them a super-privilege. To do so would completely relieve the industry of all obligations to the local populations in whose midst their facilities would be sited and whom, moreover, they profess to serve by those facilities. The industry, unbridled, has the potential to make a shambles of decades of conscientious planning. The present topic generating controversy in Cabot, the siting of a tower, requires a balance between industry needs and community needs. Many of the innovative and non-intrusive methods of siting broadcast facilities are the result of industry officials and local regulators working together. In the absence of state and local regulation, the industry would be conducting its business without factoring into its cost-benefit analyses the impact of its facilities on the local landscape, economy, environment and population. We can think of no other industry permitted to operate in this fashion.

We cannot understand why the FCC should contemplate further pre-emptions that would exceed its Congressional authorization, damage our environmental protection laws and threaten the integrity of our grass-roots democracy when any such action is clearly unnecessary, in light of the successful deployment of personal wireless service facilities throughout Vermont and in the rest of the country, to which local zoning ordinances have presented an inconvenience, perhaps, but no impediment. The inconvenience notwithstanding, telecommunications providers have succeeded in complying with state and local laws, and state and local officials have succeeded in carrying out their duties within the limits set by existing federal regulations. The pre-emptions requested in the above-named dockets, in particular a rebuttal presumption of compliance, would amount to self-certification by wireless service and other communications providers, ending the role of local regulators and terminating what has hitherto proven to be a productive collaboration between public and private sectors. Why would anyone wish to replace effective co-operation with a peremptory mandate that can only generate suspicion and animosity?

Our State and local zoning, land use and environmental laws have successfully balanced commerce and conservation, enabling private business to prosper and grow while, at the same time, protecting the very features of Vermont life that make the state attractive to new enterprise -- among them the beauty and tranquility of our rural areas. The pre-emptions already provided by the Telecommunications Act of 1996 seem to us sufficient to ensure that personal wireless telecommunications providers will have ample

opportunity to serve our community without undue or unfair hindrance. Further pre-emption, however, would call into question our right to participate in shaping the destiny of our own community. That is not a prospect we can accept without protest and challenge, and we urge the FCC reject requests to further pre-empt state and local laws with respect to personal and other wireless telecommunications service providers.

The Cabot Selectboard

R.D. Eno, chair

Larry Gochey

Mike Cookson

Before the

Federal Communications Commission

Washington D.C. 20554

In the matter of:

WT Docket No. 97-192

MM Docket No. 97-182

ET Docket No. 93-62

RM-8577

Reply and Comment to Proposed Rulemaking

Roger and Lorinda Knowlton

Thistle Hill Road

Rte I Box 767

Marshfield VT 05658

We are Roger and Lorinda Knowlton. Roger was born and raised in Vermont. and since our marriage we have lived for ten years in Central Vermont. We own 65 acres on Thistle Hill Road in Cabot , Vermont , adjacent to the land of Kenneth and Diana Klingler who have leased a two-acre site to Bell Atlantic NYNEX Mobile (now BAM) for the siting of a communications tower. Roger is a physician and Lorinda is a registered nurse. The TCA of 1996 preempted any comment we could make regarding the health effects of living so close to a cellular telephone transmission facility. Knowing that the FCC regulates only for thermal level exposures and not emissions does not alleviate our concerns about health issues.

This makes us all the more concerned about the communications industry's

request for the preemption of all state and local land use regulation. This is a state's rights issue. Washington cannot assume to be sensitive to the values and conditions at issue in every case in every location across the country where an application is submitted for another communications tower. We believe that the Constitution of the United Sattes never envisioned nor did it provide for a form of Federalism that would place control over local and land use planning and zoning issues in the hands of a federal agency in Washington.

We request that the FCC decline to further preempt state and local laws pertaining to personal wireless services facilities and all other broadcast facilities and sitings.

Vermont's Act 250 has historically proven through the last 25 years that the path to economic prosperity is through balanced environmental protection, not the preemption of such protection.

Any further preemption will undermine Act 250 and local environmental protection.

No further preemption is warranted as evidenced by the successful deployment of personal wireless services in Vermont, and around the country. In a 1995 American Planning Association survey, it is noted that under current regulation 92% of applications for PWSF tower sites are given approval.

Instead of further preemption, the FCC should allocate funds from the billions of dollars it has received from license fees and auctions to additional resources for education and training at the state and local level with regard to personal wireless service facilities.

The FCC should not anticipate that state and local land use authorities will fail to reasonably and faithfully carry out their obligations under federal law.

Present FCC preemption addresses health concerns by controlling for exposure- not emissions. A licensee might simply be required to post signs or erect

fences around a microwave transmission facility to keep the public at a distance. The new NCRP standards, like the ANSI/IEEE standards before, calculate only for thermal exposure. Legitimate questions about long-term, low-level exposure remain unaddressed. Under Act 250 it is the applicant's burden of proof to demonstrate RFR compliance. Documentation includes FCC license, equipment specifications, and testimony by applicant's site technician. Opponents are allowed to come forward with evidence to demonstrate noncompliance. The FCC should not adopt any rules that would undermine ACT 250's requirement that an applicant demonstrate that its project complies with guidelines. The FCC provides localities with no mechanism to monitor facilities after their construction and even after future modifications. The FCC must not allow what would amount to a self-certification process.

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A tower on the horizon is clearly not in harmony with the rural nature of Vermont, and is, therefore, by definition, "an adverse impact." But is its adverse impact so detrimental to the aesthetics of the area as to be judged "an undue adverse impact?" This answer can only be found at the local and state level. Washington cannot presume to make this type of judgment for Vermont or any other state.

Dated at Cabot, Vermont, this 23rd day of October, 1997

By: 

Roger H. Knowlton

Larinda A. Knowlton

Members of Thistle Hill Neighborhood Alliance

RR 1 Box 1015
Craftsbury Common, VT 05827
October 24, 1997

Secretary, Federal Communications Commission
1919 M Street NW
Washington, DC 20554

To Whom it May Concern:

My name is Anne Molleur Hanson. I was born and raised in Vermont. As a private citizen who has lived in different parts of the U.S. and abroad, I have chosen to reside in my home state mainly because of the quality of life available here. Though job opportunities are meager in our corner of Vermont, most people who reside here are willing to sacrifice opportunity for economic prosperity for the privilege of living in an area whose quality of life and physical beauty more than make up for access to high-paying jobs and contemporary career benefits. Indeed, the beauty of our rural landscape is vital to much of our livelihood--jobs based on Vermont's seasonal tourist industry. People from all over the world travel to Vermont to experience this unique part of America, whose essence has been retained largely because of a State law, Act 250, which guides development in our state. Because of Act 250 and the local land use plans it has inspired, ours is a state which carefully considers the impacts of proposed development, especially development which may alter the character of an area. This proactive approach has helped our state retain a character which is unique even among the other New England states. It is an approach essential to the economic well-being of our primary industry, tourism.

In considering the above, I am alarmed at the recent and I would have to say aggressive attempts by the private businesses whose profits are based in the cell phone industry to cover with cell towers (200 are proposed state-wide) some of the most scenic assets in our state--undeveloped mountain tops. We as citizens are told by these businesses that their actions are mandated by the 1996 Telecommunications Act, that because universal cell phone service has been deemed "essential," they can, with no

regard for aesthetics, history, wilderness, health concerns or the basic desires of citizens as expressed through their local zoning boards and town plans, site these obtrusive towers where and when they please. Time and again in our state, the desires of local citizens regarding the siting of such towers have been preempted by a heavy-handed, extremely well-financed industry whose conduct resembles more that of a federal regulatory agency than of an industry purportedly regulated by a federal agency. I am gravely concerned that new regulations proposed under FCC 97-303 will further preempt the few review powers currently reserved for local and state entities under the 1996 Telecommunications Act regarding the siting of cell towers. Furthermore I feel that while this technology makes sense for some parts of our state, e.g. the interstate corridors, the topography of our state poses some natural limitations to this technology, short of the siting of hundreds of towers in each niche and cranny of Vermont, which would seriously imperil the aesthetic appeal of our rural state.

There are three paragraphs within proposed rule FCC 97-303 which I find of particular concern. The first, paragraph 127, references section 253 of the Act, and contains language which apparently renders null and void the power of our state laws (under Act 250) and local zoning boards to have a say in where cell towers will be sited. I find this language in violation of the self-determination rights of states and their citizens, and object to any further preemption of state and local rights to determine appropriate locations for cell towers. Currently Bell Atlantic/Nynex Mobile is attempting to site a cell tower on the most scenic, undeveloped mountain in my hometown, and is unwilling to consider any sites which may be more appropriate to its residents. This paragraph would enhance, not limit BANM's ability to say what goes where, and would enable their uncompromising approach.

Paragraph 141 likewise contains language which seems to limit the opportunity for private entities, seemingly including local and state land trust and Nature Conservancy properties, to have a say in where cell towers will be sited. Much of the scenic and wild land in our state is protected under trust and preserve covenants, and it is highly inappropriate for these covenants to be superseded or "reviewed" by the FCC. The

language in this paragraph intimates that the FCC apparently seeks a mandate to do both, and I object to this.

I am also concerned with verbiage in paragraph 150, which apparently would narrowly limit who could be considered a party with legal standing regarding placement of cell towers. I am offended that citizens in any way affected by siting of these towers will be disallowed to comment on or request relief on siting. Frankly, I feel that these decisions which so strongly impact our state should be decided at the state level within state guidelines like Act 250, and not arbited by an agency located hundreds of miles away.

As a citizen of the state of Vermont, I respectfully submit these comments, hoping that the Federal entity tasked with regulating the telecommunications industry will do so in the broader interests of citizens, rather than in the somewhat narrower interests of the businesses whose profits are derived from this industry.

Sincerely,

Anne Molleur Hanson

Anne Molleur Hanson

TO: Ed Barron, Senator Patrick Leahy's office

FAX NUMBER: (202) 224-3479

FROM: Anne Molleur Hanson

DATE: 10/24/97

Mr. Barron:

Thank you for your assistance in submitting comment to the FCC re: the proposed rule on cell tower regulation. Attached is my letter to the FCC, which I understand your office will copy and deliver to the Commission.

RR 1 Box 2648
E. Hardwick, VT 05836-9519
(802) 563-2321
October 23, 1997

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: MM Docket No. 97-192
Siting of Cellular Telephone Communication Facilities

As a resident, landowner and elected official (justice of the peace and chair of the property valuation appeals board) in Walden, Vermont, I oppose the preemption of local regulation of telecommunications facility siting, as proposed by the Federal Communications Commission.

This type of development has various potential impacts, including but not limited to esthetics and land values, which make local, case-by-case consideration and review desirable and appropriate.

A primary problem which troubles me about any such preemption is the risk of increasing the alienation already felt by many citizens toward their government. If improved access to wireless telecommunication services is deemed so important, a democratically consistent approach would be to communicate with and educate the responsible local authorities about the value of such access, and then trust their judgement to balance the significance of that value against other worthwhile interests.

Preemption should be viewed as crudely expedient, deleterious to the long term well-being of the body politic, and disturbingly reminiscent of a totalitarian, central-planning approach to government. I hope you will give serious thought to how ordinary people may view and react to the involuntary interjection of a distant federal agency, such as the FCC, in local land-use planning decisions. Please find a means to implement your specific goals which recognizes the value of, and supports, local self-determination and democratic ideals.

Thank you for your consideration of my concerns.

Yours truly,

Roger A. Fox

Roger A. Fox